

SENATE BILL NO. 257

INTRODUCED BY KEANE, ANKNEY, ARNTZEN, AUGARE, BARKUS, DE. BARRETT, BOSS RIBS,
D. BROWN, R. BROWN, T. BROWN, BRUEGGEMAN, CAMPBELL, DRISCOLL, GALLUS, GEBHARDT,
HINER, HINKLE, HOLLENBAUGH, INGRAHAM, JENT, JONES, KLOCK, KOTTEL, LASLOVICH,
MCCLAFFERTY, MCGEE, MCGILLVRAY, MEHLHOFF, MILLER, MURPHY, P. NOONAN, O'HARA, PERRY,
J. PETERSON, ROUNDSTONE, SANDS, SCHMIDT, SESSO, SHOCKLEY, STAHL, STEINBEISSER,
TAYLOR, TUTVEDT, VILLA, VINCENT, WANZENRIED, Warburton, WELBORN, WINDY BOY, ZINKE,
BECKER, BELCOURT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE
RESOURCE" TO INCLUDE UPGRADES, REPAIRS, AND MAINTENANCE TO A HYDROELECTRIC FACILITY;
REQUIRING CERTAIN RENEWABLE ENERGY CREDITS BE TRANSFERRED TO THE DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING A PORTION OF THE VALUE OF THE RENEWABLE
ENERGY CREDITS ASSOCIATED WITH THE UPGRADE, REPAIR, OR MAINTENANCE TO BE DEPOSITED
IN THE UNIVERSAL LOW-INCOME ENERGY ASSISTANCE FUND; AMENDING SECTIONS 69-3-2003,
69-3-2004, AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, and reactive power.

(2) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be

1 considered to be under common ownership simply because the same entity provided debt or equity or both debt
2 and equity to both projects.

3 (3) "Community renewable energy project" means an eligible renewable resource that is interconnected
4 on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to
5 5 megawatts in total calculated nameplate capacity.

6 (4) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling
7 electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

8 (5) "Compliance year" means each calendar year beginning January 1 and ending December 31, ~~starting~~
9 ~~in 2008~~, for which compliance with this part must be demonstrated.

10 (6) "Cooperative utility" means:

11 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

12 (b) an existing municipal electric utility as of May 2, 1997.

13 (7) "Eligible renewable resource" means a facility either located within Montana or delivering electricity
14 from another state into Montana that commences commercial operation after January 1, 2005, or in the case of
15 subsection (7)(d)(ii), is completed after January 1, 2005, and that produces electricity from one or more of the
16 following sources:

17 (a) wind;

18 (b) solar;

19 (c) geothermal;

20 (d) water power, in the case of a hydroelectric project that:

21 (i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate
22 rating of 10 megawatts or less; or

23 (ii) is attributable to an upgrade, a repair, or maintenance done at an existing hydroelectric facility that
24 increases existing generating capacity;

25 (e) landfill or farm-based methane gas;

26 (f) gas produced during the treatment of wastewater;

27 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
28 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been
29 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

30 (h) hydrogen derived from any of the sources in this subsection (7) for use in fuel cells; and

(i) the renewable energy fraction from the sources identified in subsections (7)(a) through (7)(h) of electricity production from a multiple-fuel process with fossil fuels.

(8) "Local owners" means:

(a) Montana residents or entities composed of Montana residents;

(b) Montana small businesses;

(c) Montana nonprofit organizations;

(d) Montana-based tribal councils;

(e) Montana political subdivisions or local governments;

(f) Montana-based cooperatives other than cooperative utilities; or

(g) any combination of the individuals or entities listed in subsections (8)(a) through (8)(f).

(9) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(10) (a) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(b) In the case of an eligible renewable resource under subsection (7)(d)(ii), renewable energy credits are credits that must be measured by assuming that energy output in any hour is generated first by capacity attributable to the upgrade, repair, or maintenance to the existing hydroelectric facility up to the full amount of that capacity.

(11) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(12) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Section 2. Section 69-3-2004, MCA, is amended to read:

"69-3-2004. Renewable resource standard -- administrative penalty -- waiver. (1) Except as provided in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established

1 for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

2 (2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility
3 and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in
4 Montana from eligible renewable resources.

5 (3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public
6 utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy
7 in Montana from eligible renewable resources.

8 (b) As part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable
9 energy credits and the electricity output from community renewable energy projects that total at least 50
10 megawatts in nameplate capacity.

11 (c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on
12 each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

13 (4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each
14 public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical
15 energy in Montana from eligible renewable resources.

16 (b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable
17 energy credits and the electricity output from community renewable energy projects that total at least 75
18 megawatts in nameplate capacity.

19 (ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under
20 subsection (3)(b).

21 (c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on
22 each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

23 (5) (a) In complying with the standards required under subsections (2) through (4), a public utility or
24 competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based
25 on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail
26 customers in Montana.

27 (b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after
28 accounting for any line losses.

29 (6) A public utility or competitive electricity supplier has until 3 months following the end of each
30 compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(d) On an annual basis, 22% of the renewable energy credits associated with the output of an eligible renewable resource pursuant to 69-3-2003(7)(d)(ii) must become the property of the department of public health and human services. Revenue derived from the renewable energy credits must be:

(i) deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b); and

(ii) used for weatherization.

(8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) through (4).

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(a).

(11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract."

Section 3. Section 90-3-1003, MCA, is amended to read:

"90-3-1003. Research and commercialization account -- use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; or

1 (d) administrative costs that are incurred by the board in carrying out the provisions of this part.

2 (4) At least 20% of the account funds approved for research and commercialization projects must be
3 directed toward projects that enhance production agriculture.

4 (5) (a) At least 30% of the account funds approved for research and commercialization projects must
5 be directed toward projects that enhance clean coal research and development or renewable resource research
6 and development.

7 (b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and
8 development or renewable resource research and development, subsection (5)(a) does not apply.

9 (6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total
10 project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

11 (7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research
12 and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

13 (a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

14 (b) whether the project shows promise for enhancing technology-based sectors of Montana's economy
15 or promise for commercial development of discoveries;

16 (c) whether the project employs or otherwise takes advantage of existing research and commercialization
17 strengths within the state's public university and private research establishment;

18 (d) whether the project involves a realistic and achievable research project design;

19 (e) whether the project develops or employs an innovative technology;

20 (f) verification that the project activity is located within the state;

21 (g) whether the project's research team possesses sufficient expertise in the appropriate technology area
22 to complete the research objective of the project;

23 (h) verification that the project was awarded based on its scientific merits, following review by a
24 recognized federal agency, philanthropic foundation, or other private funding source; and

25 (i) whether the project includes research opportunities for students.

26 (8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated
27 interest and earnings from the account must be retained in the account. Repayments of loans and any
28 agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the
29 transfer of technology from a research and commercialization center to another nonstate organization or
30 ownership of corporate stock in a private sector organization must be deposited in the account.

(9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in ~~69-3-2003(6)~~ 69-3-2003(7) to produce electricity; and
(ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

NEW SECTION. **Section 4. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Retroactive applicability.** (1) [This act] applies retroactively, within the meaning of 1-2-109, to upgrades, ~~repairs, or maintenance~~ done at an existing hydroelectric facility after January 1, 2005, AND TO THE COMPLIANCE YEAR BEGINNING JANUARY 1, 2009.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1), RENEWABLE ENERGY CREDITS ASSOCIATED WITH UPGRADES COMPLETED AFTER JANUARY 1, 2005, MAY NOT BE CLAIMED FOR ANY PERIOD BEFORE [THE EFFECTIVE DATE

1 OF THIS ACT].

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